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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

TOPAZ SUMMERFIELD, Petitioner, v. THE SUPERIOR COURT OF LOS ANGELES COUNTY, Respondent; EDWARD E. GALANTE, Real Parties in Interest.	B239590 (Super. Ct. No. BC291148)

ORIGINAL PROCEEDING. Petition for Writ of Mandate, Mel Red Recana, Judge. Petition granted.

Pircher, Nichols & Meeks and James L. Goldman, and Jay L. Stein, for Petitioner.

No appearance on behalf of Respondent.

Randolph & Associates and Donald C. Randolph for Real Party in Interest.

On March 8, 2012, plaintiff, Topaz Summerfield, filed a mandate petition challenging a February 7, 2012 order granting summary adjudication on a single cause of action for false imprisonment. On February 17, 2012, the respondent court issued a supplemental order. According to the petition, the respondent court extended the time to file the present mandate petition for 10 days until March 8, 2012. We conclude the respondent court did not have jurisdiction to reconsider its prior July 14, 2005 order denying a prior summary judgment or adjudication motion. Thus, we issue our peremptory writ of mandate.

The complaint was filed on February 27, 2003, and contains causes of action for false imprisonment, malicious prosecution, intentional severe emotional distress infliction, and defamation. Sometime in 2005, defendant filed a summary judgment and adjudication motion. Defendant asserted the false imprisonment cause of action was without merit because his conduct was privileged. Defendant reasoned plaintiff's arrest and that of a daughter were made pursuant a judicially authorized arrest warrant issued by the High Court of Zimbabwe. The reply maintained that the affidavit in support of the arrest warrant was sufficient to immunize defendant from liability. The summary judgment and adjudication motion was denied on July 14, 2005. The case proceeded to trial and we reversed the ensuing judgment on October 11, 2007. (*Summerfield v. Galante* (Oct. 11, 2007, B188741) [nonpub. opn.].) Further, we recently reversed an order denying a special motion to strike a false imprisonment claim against an attorney, Donald C. Randolph. (*Summerfield v. Randolph* (2011) 201 Cal.App.4th 127, 129-130.)

On November 4, 2010, defendant filed a second summary adjudication motion; the one that is the subject of his petition. The second summary adjudication motion argued that defendant's conduct was subject to the Civil Code section 47, subdivision (b) privilege. Plaintiff expressly objected to the second summary adjudication motion on the ground it was an improper reconsideration request. Plaintiff argued the second summary adjudication motion failed to comply with the Code of Civil Procedure section 1008 procedural requirements. Only two declarations were filed in support of the second summary adjudication motion. Neither declaration addressed whether there were new

facts, circumstances, or law sufficient to permit reconsideration of the prior July 14, 2005 denial of the first summary adjudication motion.

A motion which is denied cannot be renewed unless the second request is accompanied by a declaration setting forth new facts, circumstances, or law. (*Branner v. Regents of University of California* (2009) 175 Cal.App.4th 1043, 1048-1049; see Code Civ. Proc., § 1008, subd. (a) ["The party making the application shall state by affidavit what application was made before, when and to what judge, what order or decisions were made, and what new or different facts, circumstances, or law are claimed to be shown"]; Weil & Brown, Cal. Practice Guide: Civil Procedure Before Trial (The Rutter Group 2011) ¶ 9:323.1, p. 9(1)-124 (rev. # 1, 2011).) Thus, the respondent court did not have the *jurisdiction* to issue its order granting summary adjudication. (Code Civ. Proc., § 1008, subd. (e) ["This section specifies the court's jurisdiction with regard to applications for reconsideration of its orders and renewals of previous motions, and applies to all applications to reconsider any order of a judge or court, or for the renewal of a previous motion, whether the order deciding the previous matter or motion is interim or final. No application to reconsider any order or for the renewal of a previous motion may be considered by any judge or court unless made according to this section"]; *Garcia v. Hejmadi* (1997) 58 Cal.App.4th 674, 691.)

There is no merit to defendant's analysis appearing in his return. First, the renewed motion could not be considered merely because it involved new facts and laws. As noted, defendant did not comply with the jurisdictional requirement the motion include a declaration listing the matters set forth in Code of Civil Procedure section 1008, subdivision (a). (*Branner v. Regents of University of California*, *supra*, 175 Cal.App.4th at pp. 1048-1049.) In the absence of such a declaration, the privilege issue could not be reconsidered. We need not address the question of whether the "new" facts or law in fact constitute a different argument on the privilege issue. The fact an amended complaint is involved changes nothing.

Second, the respondent court did not raise the privilege issue on its own motion. Defendant relies on discussions held at hearings on December 5, and 8, 2011. Our

Supreme Court has explained: "Unless the requirements of section 437c, subdivision (f)(2), or 1008 are satisfied, any action to reconsider a prior interim order must formally begin with the court *on its own motion*. To be fair to the parties, if the court is seriously concerned that one of its prior interim rulings might have been erroneous, and thus that it might want to reconsider that ruling on its own motion–something we think will happen rather rarely–it should inform the parties of this concern, solicit briefing, and hold a hearing. (See *Abassi v. Welke*[(2004)] 118 Cal.App.4th [1353,] 1360 ['The trial court invited Welke to file a second summary judgment motion indicating it wanted to reassess its prior ruling . . . . The parties had an opportunity to brief the issue, and a hearing was held.']; *Schachter v. Citigroup, Inc.*[(2005)] 126 Cal.App.4th [726,] 739.) Then, and only then, would a party be expected to respond to another party's suggestion that the court should reconsider a previous ruling. This procedure provides a reasonable balance between the conflicting goals of limiting repetitive litigation and permitting a court to correct its own erroneous interim orders." (*Le Francois v. Goel* (2005) 35 Cal.4th 1094, 1108-1109; see *Brown, Winfield & Canzoneri, Inc. v. Superior Court* (2010) 47 Cal.4th 1233,l 1239, 1248-1250 ["*Montegani v. Johnson* (2008) 162 Cal.App.4th 1231, 1238 [after trial court determined it should reconsider an interim order in light of intervening case law, it informed the parties of its concern, requested briefing, and held a hearing"]].) Nothing of the sort occurred here. The second summary adjudication motion was filed on November 4, 2011. The respondent court did not state it was reconsidering the initial July 14, 2005 ruling during the hearings on its own motion on December 5, and 8, 2011.

Let a peremptory writ of mandate issue directing the respondent court to set aside its February 7, 2012 order granting summary adjudication on the false imprisonment cause of action. Upon remittitur issuance, the respondent court is to enter an order

denying the summary adjudication motion. Plaintiff, Topaz Summerfield, is to recover her costs incurred in connection with these extraordinary writ proceedings from defendant, Edward E. Galante.

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TURNER, P. J.

We concur:

ARMSTRONG, J.

MOSK, J.